

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

COUNCIL TOWER ASSOCIATION,)
)
)
Plaintiff,)
)
)
vs.) Case No. 4:08CV1605 CDP
)
)
AXIS SPECIALTY INSURANCE)
COMPANY,)
)
)
Defendant.)

MEMORANDUM AND ORDER

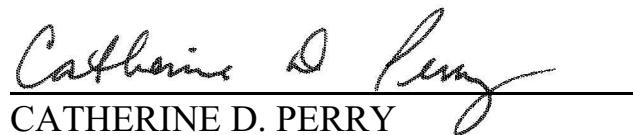
I granted summary judgment to defendant in this case on November 12, 2009. In that judgment, I ordered plaintiff to bear all taxable costs. Defendant has filed a motion for a bill of costs, and has properly itemized those costs, in the amount of \$12,921.55. Plaintiff objects to an award of costs on two grounds. First, plaintiff argues that awarding costs would impose a financial hardship because plaintiff is a nonprofit corporation. Second, plaintiff argues that the issues raised in the litigation were close and complex, and that the litigation was brought in good faith, therefore an award of costs would be inappropriate. Under Fed. R. Civ. P. 54(d), absent “a federal statute, [the Federal Rules of Civil Procedure], or a court order” providing otherwise, costs “should be allowed to the prevailing party.” I awarded costs to defendant in my November 12, 2009 judgment, and plaintiff has not persuaded me to change that order. I find that the

costs requested by defendant are proper under Fed. R. Civ. P. 54(d) and 28 U.S.C. § 1920.

Plaintiff also asks that, if I award costs, I do not award defendant the costs associated with the second deposition of Gerry McIntyre. Plaintiff argues that defendant should not be awarded the costs of that deposition because I “granted plaintiff’s motion to compel and ordered defendant to produce Mr. McIntyre at a supplemental deposition.” Because I ordered McIntyre to appear, plaintiff argues, plaintiff should not have to bear the costs of this deposition. This reasoning is nonsensical. It was on plaintiff’s own motion that McIntyre was ordered to appear for a second deposition. Without plaintiff’s urging, the second deposition would not have taken place, and these costs would not have been incurred.

Accordingly,

IT IS HEREBY ORDERED that defendant’s motion for bill of costs [#93] is granted, and the Clerk of the Court shall assess taxable costs against plaintiff Council Tower Association in the amount of \$12,921.55 in accordance with the November 12, 2009 Judgment.



CATHERINE D. PERRY
UNITED STATES DISTRICT JUDGE

Dated this 30th day of December, 2009.